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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDERICK ALAN STEWART,

Defendant and Appellant.

C089230

(Super. Ct. Nos.
STKCRFE20130005271,
SF122937B)

Defendant Frederick Alan Stewart appeals the trial court's order denying his petition for resentencing pursuant to Penal Code¹ section 1170.95, arguing the trial court erred when it ruled that his voluntary manslaughter conviction is ineligible for relief under the statute. We affirm.

¹ Undesignated statutory references are to the Penal Code.

BACKGROUND

Originally charged with first degree murder, defendant ultimately pled to voluntary manslaughter, admitted a prior strike conviction, and admitted that he was a principal who was armed during the commission of the offense. In accordance with the plea, the trial court sentenced defendant to an 18-year prison term. While defendant was serving his 18-year prison term, the Legislature enacted Senate Bill No. 1437 (2017-2018 Reg. Sess.) (Stats. 2018, ch. 1015, §§ 1-4), which amended the law governing murder liability under the felony murder and natural and probable consequences theories and provided a new procedure under section 1170.95 for eligible defendants to petition for recall and resentencing.

Defendant filed a section 1170.95 petition. The trial court denied the petition, finding defendant had not established a prima facie case for resentencing, as he was not convicted of murder, but manslaughter, and he was either the killer or a major participant in the killing.

DISCUSSION

I

Application Of Section 1170.95 To Guilty Manslaughter Plea

Defendant claims on appeal that section 1170.95 applies to persons who were charged with murder under a felony murder or natural and probable consequences theory but pleaded guilty to manslaughter to avoid trial.

“ ‘If the language [of a statute] is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.’ ” (*People v. Flores* (2020) 44 Cal.App.5th 985, 992 (*Flores*).)

“[S]ection 1170.95 authorizes only a person who was ‘convicted of felony *murder* or *murder* under a natural and probable consequences theory [to] file a petition with the court that sentenced the petitioner to have the petitioner’s *murder* conviction

vacated’ (*Id.*, subd. (a), italics added.) If the petitioner makes a prima facie showing that he or she is entitled to relief, the sentencing court must ‘hold a hearing to determine whether to vacate the *murder* conviction and to recall the sentence and resentence the petitioner on any remaining counts’ (*Id.*, subd. (d)(1), italics added.) In lieu of a resentencing hearing, the parties may stipulate that ‘the petitioner is eligible to have his or her *murder* conviction vacated’ and to be resentenced. (*Id.*, subd. (d)(2), italics added.)” (*Flores, supra*, 44 Cal.App.5th at p. 993.) “Through its repeated and exclusive references to murder, the plain language of section 1170.95 limits relief only to qualifying persons who were convicted of murder.” (*Ibid.*; see *People v. Cervantes* (2020) 44 Cal.App.5th 884, 887(*Cervantes*) [“The plain language of [section 1170.95] is explicit; its scope is limited to murder convictions”].)

“Section 1170.95 does not mention, and thus does not provide relief to, persons convicted of manslaughter, which, ‘while a lesser included offense of murder, is clearly a separate offense’ [Citation.] Had the Legislature intended to make section 1170.95 available to defendants convicted of manslaughter, it easily could have done so.” (*Flores, supra*, 44 Cal.App.5th at p. 993; see *Cervantes, supra*, 44 Cal.App.5th at p. 887 [“[t]here is no reference [in section 1170.95] to the crime of voluntary manslaughter”].)

Defendant relies on section 1170.95, subdivision (a)(2), which provides, “The petitioner was convicted of first degree or second degree murder following a trial or *accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder.*” (Italics added.) Defendant claims under the plain language of this subdivision, the statute applies to someone charged with murder, who was convicted by plea to manslaughter to avoid a conviction for murder. This claim is unpersuasive, because it “places outsized importance on a single clause to the exclusion of the provision’s other language [T]he remaining portions of section 1170.95 repeatedly and exclusively refer to murder, not manslaughter.” (*Flores, supra*, 44 Cal.App.5th at p. 995.)

Defendant also contends there is an ambiguity in the statute, in that section 1170.95, subdivision (a) appears to apply only to those convicted of murder, as opposed to the language of section 1170.95, subdivision (a)(2) which appears broader in that it includes those who accepted a plea offer in lieu of trial. We find the reasoning of *People v. Sanchez* (2020) 48 Cal.App.5th 914 persuasive on this point. “Specifying that section 1170.95 applies to murder convictions both by trial and by guilty plea clarifies that it does not matter how the murder conviction was obtained for section 1170.95 to apply. Regardless of whether that clarification was necessary, ‘the Legislature may choose to state all applicable legal principles in a statute rather than leave some to even a predictable judicial decision.’” [Citation.] Express statutory language defining the class of defendants to whom section 1170.95 applies is not surplusage. [Citation.] Such clarification ‘may eliminate potential confusion and avoid the need to research extraneous legal sources to understand the statute’s full meaning.’” (*Sanchez*, at p. 919.) Moreover, even if we assume for the sake of argument that section 1170.95, subdivision (a)(2) is ambiguous, we agree with the analysis in *People v. Turner* (2020) 45 Cal.App.5th 428, that the legislative history of Senate Bill No. 1437 reflects that the Legislature wanted to provide relief only to those who were convicted of felony murder or of murder on a natural and probable consequences theory. (*Turner*, at pp. 436-438.)

Nor, contrary to defendant’s claim, is such an interpretation absurd or contrary to the legislative intent. “The legislative goal was to eliminate the sentencing disparity caused by the felony murder rule. That goal was properly achieved by the section 1170.95 petition procedure to vacate those murder convictions.” (*Cervantes, supra*, 44 Cal.App.5th at p. 889, fn. omitted; see *Flores, supra*, 44 Cal.App.5th at pp. 996-997.) The punishment for manslaughter is already less than that imposed for first or second degree murder, and the determinate sentencing ranges permit a sentencing judge to make punishment commensurate with a defendant’s culpability based on aggravating and mitigating factors. “Providing relief solely to defendants convicted of *murder* under

a felony-murder or natural and probable consequences theory does not conflict with the Legislature’s stated objective to make ‘statutory changes to more equitably sentence offenders.’ ” (*People v. Turner* (2020) 45 Cal.App.5th 428, 439.)

Because the plain language of section 1170.95 is clear, and does not lead to an absurd result, we will follow its plain meaning and conclude that convictions for voluntary manslaughter are ineligible for section 1170.95 relief. In so doing, we are in accord with the uniform line of decisions by other courts of appeal that section 1170.95 applies to defendants convicted of murder, not to defendants who plead to and are convicted of a lesser offense. (*People v. Sanchez, supra*, 48 Cal.App.5th at p. 916 [charged with first degree murder with a gang enhancement, pled guilty to voluntary manslaughter and admitted enhancement]; *People v. Turner, supra*, 45 Cal.App.5th at pp. 431-432 [charged with first degree murder and firearm and gang enhancements, pled guilty to voluntary manslaughter and admitted firearm enhancement]; *Flores, supra*, 44 Cal.App.5th at pp. 989-990 [charged with murder with robbery and gang enhancements, pled guilty to voluntary manslaughter and admitted enhancements]; *Cervantes, supra*, 44 Cal.App.5th at p. 887 [charged with murder, pled no contest to voluntary manslaughter].) Defendant acknowledges these authorities in his reply brief and urges us not to follow them. We decline the invitation and conclude the trial court did not err in summarily denying defendant’s petition.

II

Equal Protection

Defendant contends an interpretation of section 1170.95 that excludes manslaughter plea convictions violates equal protection. With virtually no analysis of the point, he claims there is “no rational reason for such a discriminatory application of the law.”

“ ‘The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly*

situated groups in an unequal manner.’ [Citations.] This initial inquiry is not whether persons are similarly situated for all purposes, but ‘whether they are similarly situated for purposes of the law challenged.’ ” (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.)

Defendant was convicted of voluntary manslaughter, a different crime than murder, which carries a different punishment than murder; he is not similarly situated to those convicted of murder. (See *Cervantes, supra*, 44 Cal.App.5th at p. 888.) Thus, defendant’s equal protection challenge fails at the first step.

DISPOSITION

The order denying the section 1170.95 petition is affirmed.

/s/
Robie, Acting P. J.

We concur:

/s/
Duarte, J.

/s/
Hoch, J.